

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

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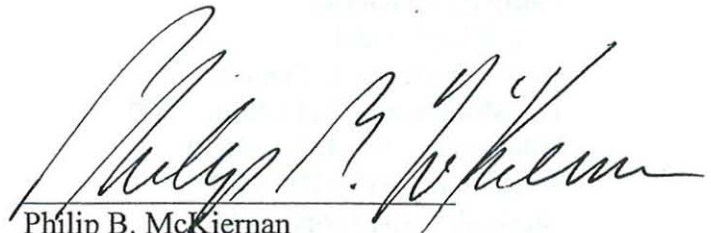
INDIANA UTILITY
REGULATORY COMMISSION

PETITION OF UTILITY CENTER, INC. d/b/a)
AQUA INDIANA, INC., TO INCREASE RATES)
AND CHARGES FOR WATER AND SEWER)
SERVICES PURSUANT TO COMMISSION'S)
MINIMUM STANDARD FILING REQUIRE-)
MENTS; TO APPROVE THE DEFERRAL AND)
AMORTIZATION OF CERTAIN COSTS FOR)
PURPOSES OF SETTING RATES AND)
CHARGES IN THIS AND FUTURE CAUSES;)
TO IMPLEMENT NEW RATE SCHEDULES)
REFLECTING THE INCREASED RATES)
AND CHARGES APPROVED IN THIS CAUSE)
AND RELATED RELIEF; AND TO ADOPT)
NEW SERVICE RULES AND REGULATIONS)

CAUSE NO. 43874

PETITIONER'S SUBMISSION OF PROPOSED ORDER

Utility Center, Inc., d/b/a Aqua Indiana, Inc., ("Aqua Indiana"), by counsel,
submits for the Commission's consideration and used the attached Proposed Order. An
electronic version of the attached Proposed Order will be provided to the Presiding
Administrative Law Judge.



Philip B. McKiernan
Hackman Hulett & Cracraft, LLP
111 Monument Circle, Suite 3500
Indianapolis, IN 46204-2030
Telephone: (317) 636-5401
Facsimile: (317) 686-3288

Attorneys for Petitioner
Utility Center, Inc. d/b/a Aqua Indiana, Inc.

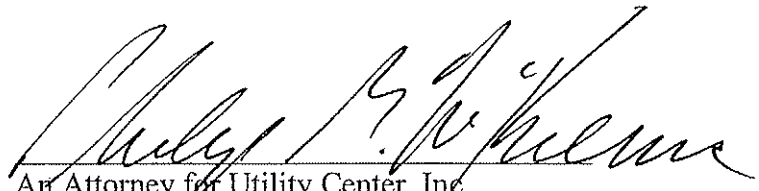
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of "Petitioner's Submission of Proposed Orders" was served upon the following by hand delivery or First Class U.S. Mail this 3rd day of November, 2010.

Daniel M. LeVay
Indiana Office of Utility Consumer Counselor
National City Center
Suite 1500 South
101 W. Washington, Street
Indianapolis, Indiana

Randolph L. Seger
Casey M. Holsapple
Bingham McHale LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204


An Attorney for Utility Center, Inc.
d/b/a Aqua Indiana, Inc.

Philip B. McKiernan
Joseph M. Hendel
Hackman Hulett & Cracraft, LLP
111 Monument Circle, Suite 3500
Indianapolis, IN 46204-2030
Telephone: (317) 636-5401
Facsimile: (317) 686-3288

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CAUSE NO. 43874

APPROVED: _____, 2011

BY THE COMMISSION

Carolene R. Mays, Commissioner
Aaron A. Schmoll, Administrative Law Judge

On March 24, 2010, Utility Center, Inc., d/b/a Aqua Indiana, Inc., ("Petitioner" or "Utility Center") filed its Petition requesting authority to increase the recurring monthly rates and charges it collects for water and sewage disposal utility services provided to the public pursuant to the Commission's Minimum Standard Filing Requirements ("MSFRs") set forth at 170 IAC 1-5 and for other related relief. Petitioner subsequently filed the testimony and exhibits constituting its case-in-chief on March 26, 2010.

Petitioner also submitted to the Commission and Indiana Office of Utility Consumer Counselor ("OUCC" or "Public") on March 26, 2010 the working papers and other information required by the MSFRs. The OUCC identified no deficiencies in Petitioner's submission. Petitioner, however, was requested by the Commission to supplement its working papers submission by docket entries dated June 16, 2010 and September 20, 2010, as well as by the

Presiding Administrative Law Judge at the July 7, 2010 hearing conducted in this Cause.

Petitioner provided the requested supplemental working papers in a timely manner.

On April 19, 2010, the City of Fort Wayne, Indiana ("Intervenor" or "Fort Wayne") petitioned for leave to intervene as a party to this Cause. No opposition having been received to the Fort Wayne's petition, the same was granted by a docket entry dated April 27, 2010.

Petitioner and OUCC submitted a Joint Stipulation as to Procedural Schedule with the Commission on May 14, 2010. The same having been served on Fort Wayne, which expressed no opposition to it, the Presiding Officers entered on June 8, 2010 a docket entry incorporating Petitioner's and OUCC's stipulation.

Pursuant to notice given as provided by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public hearing was conducted on July 1, 2010, in Room 224, PNC Center, 101 West Washington Street, Indianapolis, Indiana 46204. Petitioner, OUCC and Intervenor appeared and participated at the hearing, but no member of the general public appeared or participated in the evidentiary hearing. The testimony and exhibits constituting Petitioner's case-in-chief filed on March 26, 2010, as subsequently supplemented by Petitioner on May 28, 2010, were made part of the record of this Cause without objection and, after the cross-examination of Petitioner's witnesses, the hearing adjourned.

Pursuant to notice given as provided by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, the Commission conducted on August 4, 2010 a field hearing at Summit Middle School, 4509 Homestead Road, Fort Wayne, Indiana, 46814, beginning at 6:00 p.m. During this public field hearing, members of the public provided oral and/or written testimony in this Cause. The OUCC made a part of the

record of the field hearing certain correspondence received by it. The OUCC also requested and received leave of the Commission to have the record of the field hearing left open in order to allow the OUCC to receive and submit as part of the record additional correspondence.

Pursuant to notice given as provided by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public hearing was conducted on October 5, 2010, in Room 224, PNC Center, 101 West Washington Street, Indianapolis, Indiana 46204. Petitioner, OUCC and Intervenor appeared and participated at the hearing, but no member of the general public appeared or participated in the evidentiary hearing. The testimony and exhibits constituting the OUCC's and Intervenor's cases-in-chief were made part of the record of this Cause at the October 5 hearing and their witnesses were offered for cross-examination. Intervenor's cross-answering testimony, as well as Petitioner's rebuttal testimony and exhibits, also were made part of the record of this Cause and their respective witnesses offered for cross-examination at the October 5 hearing.

At the October 5, 2010 hearing the Commission also admitted into evidence cross-examination and re-direct examination exhibits, as well as took administrative notice of the following Orders: November 18, 1998 Order in Cause No. 40974-U, December 29, 1998 Order in Cause No. 40974-U, October 23, 2002 Nunc Pro Tunc Order in Cause No. 41968, February 25, 1999 Interim Order in Cause No. 41187, March 3, 2004 Order in Cause No. 42332, August 31, 2005 Final Order in Cause No. 41187 and September 8, 2010 Order in Cause No. 43666.

Based upon applicable law, and the evidence presented herein, and being duly advised in the premises, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal and timely notice of the evidentiary hearing conducted in this Cause was provided as required by law. Petitioner is a "public utility" as

defined in Ind. Code § 8-1-2-1. The Commission has jurisdiction of the parties and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Petitioner is an Indiana corporation, with its principal office and place of business at 111 West Hamilton Road, S., Fort Wayne, Indiana, 46814. Petitioner owns, operates and controls utility plant, property, equipment and facilities used and useful in the production, treatment, distribution and sale of water and other water services, including fire protection to, as well in the collection, transportation, treatment and disposal of sewage for, the public.

Utility Center provides both water and sewage utility services to customers located in Aboite and Wayne Townships in Allen County and a portion of Jefferson Township in Whitley County. There were approximately 12,022 sewer customers and 12,105 water customers served by Utility Center's facilities as of September 30, 2009.

3. **Existing Rates.** The Commission approved Utility Center's current monthly recurring rates and charges for both its water and sewage disposal operations in its August 27, 2008 Order in Cause No. 43331. The Commission approved the non-recurring fees and charges Utility Center currently collects from its water and sewage disposal customers by action taken at its January 30, 2009 conference. Additionally, Utility Center has implemented a distribution improvement charge ("DSIC") pursuant to the Commission's April 7, 2010 Order in Cause No. 42416 DSIC-5. Its sewer rates, however, are unchanged from those approved in Cause No. 43331.

4. **Relief Requested.** Petitioner requested in its March 26, 2010 testimony and exhibits authority to increase on an across-the-board basis the recurring monthly rates and charges it collects for the water and sewer utility services by approximately 17.23% and 18.53%,

respectively. The increases in operating revenue associated with those rate increases are 16.64% and 18.48% for Utility Center's water and sewer operations, respectively. Utility Center also is seeking Commission approval to: (i) allow deferral of certain legal costs as a regulatory asset and to amortize the same over an appropriate period and reflect the same among Aqua Indiana's operating expenses; (ii) approve revised Rules and Regulations for the operation of Utility Center's water and sewage disposal utilities; and (iii) allow the deferral of depreciation and capitalization of interest and equity costs on certain capital improvement projects subsequent to their in-service date.

5. **Test Year.** As approved by the June 8, 2010 docket entry, the period used for determining the revenues and expenses incurred by Petitioner to provide water utility and sewage disposal services to the public was the twelve months ended September 30, 2009. With revenue and expense adjustments for changes that were fixed, known and measurable for ratemaking purposes and occurring before September 30, 2010, this test year is sufficiently representative of Petitioner's normal operations to provide reliable information for ratemaking purposes.

6. **Petitioner's Rate Base.**

A. **Test Year Plant in Service.** There was no dispute that the water and sewage disposal utility properties reflected on Petitioner's books as being in service on September 30, 2009, are actually devoted to, and used and useful in, providing water and sewer service to the public. Further, there is no dispute concerning the September 30, 2009 utility plant balances, which were \$34,483,213 and \$52,867,837 for Petitioner's water and sewage disposal utilities, respectively.

B. **Major Projects**. As allowed by 170 IAC 1-5-4, Petitioner supplemented its September 30, 2009, plant balances for its water and sewage disposal utilities to reflect the following four major projects:

Chestnut Water Treatment Plant Softening Project – This project involved the addition of a 1,750 gallon per minute softening system to the Chestnut WTP to reduce water hardness. This project consisted of installing six 7.5 foot diameter softening tanks and brine tanks.

Covington Water Treatment Plant Softening Project - This project involved the addition of a 700 gallon per minute softening system to the Covington WTP to reduce water hardness. This project consisted of installing three 7.5 foot diameter softening tanks and brine tanks.

Aboite Meadows Water Treatment Plant Reconstruction - This project involved the reconstruction of the Aboite Meadows WTP to replace facilities that have exceeded their useful life and to improve water quality. The project consisted of removing existing softening facilities and installing a 625 gallon per minute softening system consisting of three 7.5 foot diameter softening tanks, two 7,500 gallon brine tanks, interior piping, electrical connections, and a chlorination system. In addition, a new 1,250 gallon per minute iron removal system consisting of two 10 foot diameter by 22 foot long horizontal iron filters was added. The existing building also will be expanded and remodeled.

Billing System / Call Center Project - This project (commonly referred to as “Meritage”) involved the Petitioner’s conversion to a fully automated common customer information system that consolidated aspects of both its customer information system and the customer service functions (including call center, collections, and billing functions) into a shared service organization. As a result, Petitioner is now served by a regional call center with backup provided by two other regional call centers.

There was no dispute that Petitioner satisfied the requirements of 170 IAC 1-5-4 in connection with the above-described major projects; namely: (1) Each project was identified in the Verified Petition; (2) Estimates of Petitioner’s investment in each project was included in Petitioner’s case-in-chief; (3) the amount that Petitioner seeks to include in its rate base does not exceed those estimates; (4) Monthly investment updates were filed during the course of the proceedings; (5) Each project was declared to be used and useful at least ten business days before

the final evidentiary hearing; and (6) the estimated and actual cost of each project was more than 1% of Petitioner's proposed rate bases.

The OUCC agreed that Petitioner's plant in service should be supplemented as proposed to reflect the four major projects and, together with associated depreciation, reflected in Petitioner's original cost rate base. However, Intervenor Fort Wayne, while not disputing that the major projects were in service and devoted to providing service to the public, requested that the Commission not allow Petitioner to reflect the major projects in its original cost rate base. According to Intervenor's witness Mr. Thomas Theodore Nitza, Jr., the inclusion of the major projects in Petitioner's rate base should depend on customer satisfaction with them.

In response to Intervenor's position that the Commission should disallow the three major projects involving water softening improvements, Petitioner's witness Mr. William L. G. Etzler testified that Utility Center made those improvements in order to address the hardness of Utility Center's finished water, which had been a concern of Utility Center's customers for a long period of time. Mr. Etzler also described that Utility Center has had water softening facilities at its Aboite Meadows WTP for quite some time and those facilities had only been refurbished as part of the larger reconstruction of the plant that the Commission had directed Utility Center to pursue in its August 27, 2008 Order in Cause No. 43331.

Mr. Etzler testified that it had been observed that the Aboite Meadows WTP's softening facilities were insufficient to deal with the hardness of its finished water since Utility Center's other treatment plants did not possess any softening capabilities. According to Mr. Etzler, the un-softened output of those two plants was diluting the softened output of the Aboite Meadows WTP. Thus, in order to improve the effectiveness of the required water softening facilities at the Aboite Meadows WTP and, thereby, better address the hardness of its finished water, Mr. Etzler

stated that Utility Center undertook to add softening facilities at the Chestnut Hills and Covington WTPs.

In regard to the Meritage project, Mr. Etzler's testimony strongly disputes Mr. Nitza's assertion that there was not a need for an upgrade. The old billing system was antiquated, unreliable and needed to be replaced. Initially, Mr. Etzler stated that the two quotations from his testimony at the July 1 hearing relied upon by Mr. Nitza misrepresented the evidence before the Commission. Mr. Etzler pointed out that, contrary to the quotations selected by Mr. Nitza, he testified that Utility Center's previous billing system was using outdated software. Mr. Etzler also pointed out that Mr. Nitza had ignored completely the testimony of Mr. Bobby D. Estep describing Utility Center's previous billing system as "very antiquated" and unreliable.

Mr. Etzler also testified that the few customer comments Mr. Nitza relied upon to support his arguments concerning the Meritage project actually did not do so. Mr. Etzler noted that the comments of at least one person did not describe any unsatisfactory experience with Utility Center's billing services. Further, Mr. Etzler showed that the comments of two other customers described purported problems that apparently arose prior to the implementation of the Meritage project.

The evidence before the Commission does not support Intervenor's arguments for excluding the major projects from Petitioner's rate bases. There is no question that the major projects are in use and useful for the provision of service. Further, Petitioner has shown that the major projects were pursued in order to address needs that have a direct impact on the quality of its services. Therefore, the Commission finds that four major projects are properly included in Petitioner's utility plant in service and reflected in its rate base.

Additionally, the Commission cannot accept Mr. Nitza's suggestion that Utility Center's

parent company, Aqua America, should subsidize the cost of the major projects in light of its recent financial success. Mr. Nitza fails to cite any authority to support such a subsidy and, other than asserting that it will permit lower rates, Mr. Nitza makes no argument to support it. Moreover, the evidence provides no factual basis for such a subsidy. To the contrary, as established by the OUCC by its cross-examination of Mr. Kopas, Utility Center has paid no dividends to Aqua America that could arguably be used to fund such a subsidy. Further, Utility Center's total earnings for the three-year period cited by Mr. Nitza were \$1,635,141 for an average of \$545,047 annually, which reflects less than a 2% return on the associated equity investors have supplied and far less than the 10% return on equity reflected in Utility Center's current rates. Thus, there is no factual or legal basis supporting Fort Wayne's suggestion that anything less than the full cost of the major projects be reflected in Utility Center's rate bases.

C. **Gross Utility Plant in Service.** The amounts of the specific increases in Petitioner's plant values associated with each of the major projects are as follows:

| | |
|-----------------------------------|-------------|
| Chestnut WTP Softening Project | \$655,321 |
| Covington WTP Softening Project | \$1,010,478 |
| Aboite Meadows WTP Reconstruction | \$1,996,588 |
| Meritage Project | \$971,585 |

All of the three water treatment plant projects are fully allocable to Petitioner's water utility, while the cost of the Meritage project should be divided between Petitioner's water and sewage disposal utilities. Petitioner and the OUCC agree that \$487,491 of the cost of the Meritage project is allocable to Petitioner's water utility and \$484,094 to its sewage disposal utility.

In addition to adjusting the test year plant values for these major project amounts, Petitioner and the OUCC are in agreement that a few additional adjustments are necessary in order to establish the total or gross values for Petitioner's utility plant in service. Petitioner and OUCC agree that Petitioner's test year value for Petitioner's water utility plant should be

increased by \$1,555 to reflect the addition of a capitalized operating expense, as well as reduced by \$405,049 to reflect plant retirements related to major projects. Petitioner and OUCC also agreed that the test year value for Petitioner's sewage disposal utility plant should be increased by \$10,625 to reflect the addition of capitalized operating expenses, and reduced by \$37,542 to reflect plant retirements related to one of the major projects and by \$127,547 to reflect the value of land the Commission directed be removed from Petitioner's rate base in Cause No. 43666.

The OUCC originally had proposed that the test year plant values also should be reduced to reflect the retirement of property used as part of Petitioner's former billing system. Petitioner opposed that reduction on rebuttal and the OUCC acknowledged that such a reduction was inappropriate at the October 5 hearing. Accordingly, the Commission finds that values of Petitioner's gross utility plant in service for its water and sewage disposal utilities should reflect Petitioner's investments in the major projects, as well as the other adjustments agreed to by the parties. The gross utility plant in service values for Petitioner's water and sewage disposal utilities are \$38,229,596 and \$53,197,468, respectively.

D. **Original Cost Rate Base.** While agreeing with the values of Petitioner's gross utility plant in service that should be reflected in its original cost rate base, the Public disagreed with Petitioner's calculation of its original cost rate base in two respects: the allowance made for working capital and the acquisition adjustment reflected on Petitioner's books.

(i) **Working Capital.** Petitioner proposed reflecting as part of its rate base \$332,121 in working capital for Petitioner's water utility and \$344,909 for its sewage disposal utility. The Public, however, only allowed for \$286,498 for the water utility and \$280,248 for the sewer disposal utility.

The differences between Petitioner and the OUCC primarily arise from their different

calculations of appropriate O&M expenses used as the starting point for calculating the working capital allowance. However, Petitioner and the OUCC also disagreed on whether purchased power expense should be excluded from Petitioner's O&M expense in order to calculate appropriate working capital allowances.

In support of the OUCC's view, Mr. Richard J. Corey pointed out that purchased power expense was paid for in arrears and, as such, working capital was not needed to fund it. However, while agreeing that purchased power expense was an expense paid in arrears, Petitioner's witness Robert A. Kopas noted that other expenses, such as postage, were paid for in advance. Moreover, Mr. Kopas testified that the percentage of O&M methodology being used by both the OUCC and Petitioner was designed to take an average of all expenses rather looking at each item individually as would be done as part of a lead-lag study. Mr. Kopas also testified that the exclusion of purchased power expense from O&M expenses for purposes of determining working capital was inconsistent with his experience in other states.

The OUCC's determination of pro-forma Petitioner's O&M expenses and uncollectable account expense, however, are understated as shown in Finding Nos. 8(A) and 8(B) below. Moreover, Petitioner's evidence in support of including purchased power expense among its O&M expenses for purposes of calculating its working capital allowances is persuasive. Accordingly, the proper working capital allowances for Petitioner's water and sewage disposal utilities should be \$332,121 for Petitioner's water utility and \$344,909 for its sewage disposal utility.

(ii) **Acquisition Adjustment.** Petitioner and the OUCC also disagree on the amount of the acquisition adjustment net of accumulated amortization shown on Petitioner's books that should be reflected in its rate base. According to Petitioner, the net acquisition adjustment for its

water utility is \$1,843,396 and \$2,382,564 for its sewage disposal utility. The OUCC, on the other hand, maintains that those amounts should be \$1,766,468 and \$2,003,431, respectively.

The differences between Petitioner and OUCC in regard to the proper amount of the net acquisition adjustments to reflect in Petitioner's rate base arises from a disagreement over when the amortization of the acquisition adjustment should have begun. According to Petitioner, amortization of the acquisition adjustment should be recognized as beginning in March 2003, when it first implemented the rates that reflected the inclusion of the acquisition adjustment in its rate base. The OUCC maintains, however, that the Commission should find that the amortization should begin as of January 31, 1999, roughly contemporaneous with the date of the acquisition giving rise to it.

In support of its view, the OUCC points to the Commission's Order in Cause No. 41968 where the Commission accepted for purposes of setting Petitioner's rates under a previous owner the commencement of the acquisition adjustment amortization as of January 31, 1999. Petitioner contends, however, that the Commission made no express findings determination supporting the OUCC's view. Petitioner also maintains that the OUCC's proposed amortization is contrary to good ratemaking practice. According to Mr. Kopas, in order for a utility to have a legitimate opportunity to earn a fair, just and reasonable return on its investments, revenues must be generated to offset reasonable and accepted expenses associated with those investments. Mr. Kopas stated that this "matching principle" is a critical foundation of ratemaking and, consistent with it, it is a common and a typically-accepted practice to begin an allowed amortization when the rates intended to collect the revenues associated with the amortization are implemented.

Mr. Kopas also pointed out that the appropriateness of the matching principle he advocated was reflected in Petitioner's current rates. For example, the amortization of rate case

and deferred depreciation expenses reflected in Petitioner's current rates began when those rates were implemented. Similarly, the amortization of certain expenses related to a hydraulic analysis and mapping study originally approved in Cause No. 41968 began about March 2003, contemporaneous with the implementation of the new rates that included the matching revenues. On cross-examination at the October 5 hearing, Mr. Corey generally agreed with the matching principle articulated by Mr. Kopas.

We find that the matching principle should apply to Petitioner's proposed acquisition adjustment. The retroactive amortization of Petitioner's acquisition adjustment adopted in Cause No. 41968 was improper. That amortization should have begun in March 2003 when the rates intended to recover the expenses associated with the amortization were first implemented. Unless the amortization period for the acquisition adjustment is matched with the receipt of the associated revenues, Petitioner is denied an opportunity to fully recover the investment reflected by the acquisition adjustment.

Consistent with our findings on the acquisition adjustment amortization and the appropriate working capital allowances discussed above, the Commission finds that Petitioner's original cost rate base for its water and sewage disposal utilities are \$24,707,961 and \$32,000,273, respectively. The calculation of those amounts is as follows:

| | <u>Water</u> | <u>Sewer</u> |
|---------------------------------------|---------------------|---------------------|
| Gross Utility Plant in Service | \$38,229,596 | \$53,197,468 |
| Add: Net Acquisition Adjustment | 1,843,396 | 2,382,564 |
| Less: Reserve for Accum. Depreciation | <u>6,186,867</u> | <u>10,703,705</u> |
| Net Utility Plant in Service | 33,886,125 | 44,876,327 |
| Add: Deferred Charges | 501,696 | 1,285,480 |
| Materials & Supplies | 118,477 | 101,284 |
| Working Capital | 332,121 | 344,909 |
| Less: Customer Advances | 506,628 | 688,374 |
| Contributions in Aid of Construction | 8,656,503 | 12,272,952 |
| Deferred Taxes | <u>967,326</u> | <u>1,646,401</u> |
| Original Cost Rate Base | <u>\$24,707,961</u> | <u>\$32,000,273</u> |

E. **Fair Value Determination.** The parties presented no evidence establishing fair value rate bases for Petitioner's water and sewer disposal utilities other than in connection with supporting their respective proposed original cost rate bases. On the basis of the evidence presented in this Cause and the findings made above, therefore, the Commission finds that the original cost rate bases for Petitioner's water and sewage disposal utilities should be accepted as their respective fair value rate bases. Accordingly, the fair value of Petitioner's water and sewage disposal properties in service and used and useful for the convenience of the public at September 24, 2010 are \$24,707,961 and \$32,000,273, respectively.

7. **Fair Rate of Return.** Petitioner requested the Commission to authorize it the opportunity to earn an overall rate of return of 8.195% for both the water and wastewater operations based upon a capital structure consisting of 50% long-term debt and 50% common equity at a debt cost rate of 5.14% and a recommended common equity cost rate of 11.25%. The OUCC, on the other hand, only recommended an overall rate of return of 7.008% for both the water and wastewater operations based upon a capital structure consisting of 54% long-term debt and 46% common equity at a debt cost rate of 5.14% and a recommended common equity cost rate of 9.2%.

A. **Capital Structure**

(i) **Petitioner's Position.** According to Ms. Ahern, Utility Center's capital structure is based, in part, on allocations of capital from the Aqua America, Inc. in such a manner as to maintain a 50% debt / 50% common equity balance. Ms. Ahern maintained that such a capital structure is reasonable to use and consistent with the range of common equity ratios maintained, on average, by the companies in the two proxy groups that she and the OUCC used to develop cost of common equity recommendations.

(ii) **OUCC Position**. Mr. Kaufman disagreed with Ms. Ahern's recommended use of a capital structure consisting of 50% long term debt and 50% common equity. In Mr. Kaufman's view, the capital structures of the proxy companies used by Ms. Ahern to determine an appropriate cost of equity for Petitioner trended towards either debt or equity-heavy structures and noted that several members of the proxy groups are on opposite ends of the debt-equity spectrum. Mr. Kaufman also expressed the opinion that, contrary to Ms. Ahern's testimony, it was important to review the capital structure on a year-by-year basis and not on the basis of a 5 or 10 year average. According to Mr. Kaufman, using averages only serves to smooth yearly variances and does not provide any insight into the financing strategies or optimal structures that each company is using.

Mr. Kaufman recommended that the Commission adopt the capital structure of Utility Center's parent Aqua America as the appropriate capital structure to apply to Utility Center and notes that at the end of the test year Aqua America capital structure was 54% long term debt and 46% equity. Mr. Kaufman noted in support of using that Aqua America's capital structure that it could be determined from publicly available information. Based on statements made by Aqua America's CFO, Mr. Kaufman testified that Aqua America will continue to trend towards more debt in their capital structure in the near future.

(iii) **Petitioner's Rebuttal**. Ms. Ahern disagreed with the OUCC's recommendation to use Aqua America's consolidated capital structure. Foremost, the OUCC fails to recognize that a majority of the debt at the Aqua America level is restricted to certain future capital improvement projects and unavailable to Utility Center. This is because certain states where Aqua America has operating companies provide tax exempt financings or low interest loans tied to certain capital improvement projects in the particular state. According to Ms. Ahern, there is

\$1,246,207,000 of long-term debt outstanding and \$216,000,000 of non-controlling interest held on the balance sheets of subsidiaries of Aqua America and not at the parent level. These funds are not available to Aqua America to invest in the utility plant of other Aqua America's subsidiaries, including Utility Center. When adjusted for funds not available for investment in Utility Center, the capital outstanding results in capital structure ratios of 6.43% long-term debt, 0.03% non-controlling interest and 93.54% common equity.

Ms. Ahern testified, however, that a common equity ratio in excess of 90% was inappropriate to use for ratemaking. This is because such a structure contains a higher percentage of common equity capital than is necessary if Utility Center's capital structure were market-based, i.e., if it raised debt capital directly in the marketplace. Moreover, a capital structure which contains a higher than necessary common equity ratio results in the need for an excessive level of revenues in order to support the higher common equity ratio, which ultimately burdens ratepayers.

Ms. Ahern also reiterated that a capital structure consisting of 50% long-term debt and 50% common equity remained consistent with the range of common equity ratios maintained, on average, by the companies in both of the proxy groups upon which both the OUCC and she based their common equity cost rate recommendations. Ms. Ahern also pointed out that Utility Center's ratemaking capital structure ratios of 50% long-term debt and 50% common equity are consistent with Standard & Poor's (S&P) revised utility financial guidelines for a utility whose bonds are rated in the A bond rating category and which has been assigned a business risk profile of "Excellent" and a financial risk profile of either "Intermediate" or "Significant", like the companies in both of the two proxy groups. Ms. Ahern testified that, if anything, a common equity ratio of 50% is conservative as it falls below the bottom of the range of implied common

equity ratios for utilities assigned an “Intermediate” financial risk profile and at the bottom of the range for utilities assigned a “Significant” financial risk profile.

(iv) **Capital Structure Discussion and Findings.** In view of the foregoing discussion, the Commission adopts as reasonable Ms. Ahern’s recommended capital structure comprised of 50% long-term debt and 50% common equity. Summarizing the points she makes, we find that such a structure is reasonable given Utility Center’s small relative size; the capital structures maintained, on average, by the water companies and gas distribution companies in the two proxy groups used by the parties; S&P’s revised indicative financial ratios; and the fact that the only capital in Aqua America’s capital structure available for investment in Utility Center’s jurisdictional rate base reflects a common equity ratio of 93.54%, which is unsuitable for ratemaking purposes.

B. Cost of Common Equity.

(i) **Petitioner’s Position.** In developing her recommended cost of common equity of 11.25%, Ms. Ahern noted that as a wholly-owned subsidiary of Aqua America, Utility Center’s common stock is not publicly traded. Therefore, a market-based common equity cost rate cannot be determined directly for Utility Center. Consequently, Ms. Ahern assessed the market-based cost rates of companies of relatively similar risk, *i.e.*, proxy groups, for insight into a recommended common equity cost rate applicable to Utility Center and suitable for cost of capital purposes. Ms. Ahern testified that using other utilities of relatively comparable risk as proxies is consistent with the principles of fair rate of return and adds reliability to the informed expert judgment necessary to arrive at a recommended common equity cost rate. However, Ms. Ahern noted that no proxy groups can be selected to be identical in risk to Utility Center. Therefore, the proxy groups’ results must be adjusted if necessary, to reflect the greater relative

business and/or financial risk of Utility Center.

Ms. Ahern explained that the water companies comprising one of her proxy groups were selected based on the following criteria: they are included in the Water Company Group of AUS Utility Reports (February 2010); they have Value Line or Reuters consensus five-year EPS growth rate projections; they have a positive Value Line five-year DPS growth rate projection; they have a Value Line adjusted beta; they have not cut or omitted their common dividends during the five years ending 2008 or through the time of the preparation of her testimony; they have 60% or greater of 2008 total net operating income derived from and 60% or greater of 2008 total assets devoted to regulated water operations; and which, at the time of the preparation of her testimony, had not publicly announced that they were involved in any major merger or acquisition activity.

Because of the small number of publicly traded water companies available for use as proxies for Utility Center, as well as the limited availability of comprehensive investment analyst coverage for those companies, Ms. Ahern explained that she also utilized a proxy group of gas distribution companies. Like water companies, these gas distribution companies deliver a commodity, i.e., natural gas, to customers through a similar distribution system whose service rates of return are set by the regulatory ratemaking process. The basis of selection for the proxy group of eight natural gas distribution companies was similar to that used to select the water company proxy group.

Ms. Ahern's cost of equity recommendation results from the application of four well-tested market-based cost of common equity models, the Discounted Cash Flow ("DCF") approach, the Risk Premium Model ("RPM"), the Capital Asset Pricing Model ("CAPM"), and the Comparable Earnings Model ("CEM"). Ms. Ahern explained that all of these models were

market based. The DCF model is market-based in that market prices are utilized in developing the dividend yield component of the model. The RPM is market-based in that the bond ratings and expected bond yields used in the application of the RPM reflect the market's assessment of bond/credit risk. In addition, the use of betas to determine the equity risk premium also reflects the market's assessment of market/systematic risk as betas are derived from regression analyses of market prices. The CAPM is market-based for many of the same reasons that the RPM is market-based i.e., the use of expected bond (Treasury bond) yields and betas. The CEM is market-based in that the process of selecting the comparable risk non-utility companies is based upon statistics which result from regression analyses of market prices and reflect the market's assessment of total risk.

Ms. Ahern pointed out that no single common equity cost rate model should be relied upon exclusively in determining a cost rate of common equity and the results of multiple models should be taken into account. Specifically, she stated that she employed all four cost of common equity models because: no single model is so inherently precise that it can be relied upon solely, to the exclusion of other theoretically sound models; all four models have application problems associated with them; all four models are based upon the Efficient Market Hypothesis ("EMH"), which requires the assumption that investors rely upon multiple cost of common equity models; and as demonstrated previously, the prudence of using multiple cost of common equity models is supported in both the financial literature and regulatory precedent. According to Ms. Ahern the academic literature provides substantial support for the need to rely upon more than one cost of common equity model in arriving at a recommended common equity cost rate.

Based upon her analysis using the four identified models, Ms. Ahern concluded that common equity cost rates of 11.35% and 10.10% are indicated for the water and gas distribution

proxy groups. However, Ms. Ahern testified that those common equity cost rates are applicable to the larger, less risky proxy water companies and proxy gas distribution companies. Because Utility Center has greater business risk than the average of both proxy groups due to its relatively smaller size measured by book capitalization or the market capitalization of common equity, it was necessary to upwardly adjust the common equity cost rates. Based on data contained in 2010 Risk Premia Report, Ms. Ahern considered a business risk adjustment of 4.17% to be indicated due to Utility Center's size relative to the proxy water companies and an adjustment of 4.55% is indicated relative to the proxy gas distribution companies. However, she only made adjustments of 0.20% (20 basis points) to the water proxy group and 0.30% (30 basis points) to the gas distribution company proxy group to reflect Utility Center's greater relative business risk.

The results of Ms. Ahern analyses are summarized below:

| | Proxy Group of Six AUS Utility Reports <u>Water Companies</u> | Proxy Group of Eight AUS Utility Reports Gas <u>Distribution Companies</u> |
|--|---|--|
| Discounted Cash Flow Model | 11.77% | 9.43% |
| Risk Premium Model | 10.85% | 10.57% |
| Capital Asset Pricing Model | 11.00% | 10.16% |
| Comparable Earnings Model | 14.00% | NMF |
| Indicated Common Equity Cost Rate Before Adjustment for Business Risk | 11.35% | 10.10% |
| Business Risk Adjustment | .20% | .20% |
| Indicated Common Equity Cost Rate After Adjustment for Business Risk | 11.55% | 10.40% |
| Recommended Common Equity Cost Rate | 11.25% | |

(ii) **OUEC Position**. Mr. Edward Kaufman testified on behalf of the OUEC concerning the appropriate cost of equity applicable to Utility Center. Adopting the same proxy groups as used by Ms. Ahern, Mr. Kaufman employed only two recognized methodologies to estimate the

cost of equity, CAPM and DCF. Based on the results of his application of those models, Mr. Kaufman identified the appropriate overall cost of equity for Utility Center to fall in the range of 7.41% to 9.43% and specifically recommended 9.2% as the appropriate cost of equity to use in establishing Utility Center's rates. Mr. Kaufman's recommended 9.2% included the same 20 basis point adjustment recommended by Ms. Ahern.

While adopting parts of it, Mr. Kaufman also criticized Ms. Ahern's testimony. Noting that Ms. Ahern's estimated cost of equity is approximately 200 basis points greater than his, Mr. Kaufman contended that the difference, in large part, was due to: Ms. Ahern use of CEM analysis that overstates cost of equity and includes companies that are not comparable to the water industry; Ms. Ahern's sole reliance on the arithmetic mean to estimate her historical market risk premium in both her CAPM and RPM analyses; Ms. Ahern's too heavy reliance on intermediate term forecasted growth in earnings per share in her DCF analysis and subsequent use of an inappropriately high growth rate; and Ms. Ahern overstatement of the forecasted market risk premium in both her CAPM and RPM analyses.

(iii) **Petitioner's Rebuttal.** On rebuttal, Ms. Ahern observed that Mr. Kaufman's 9.2% recommended common equity cost rate is among the lowest, if not the lowest, recommended common equity cost rate that she had seen. Given today's severely and persistently strained environment, and the significant volatility in the stock market, Ms. Ahern asserted a 9.2% common equity cost rate was insufficient to maintain the integrity of presently-invested capital and to permit the attraction of needed new capital at a reasonable cost in competition with other firms of comparable risk. Ms. Ahern also stated that, while the OUCC claims it has reviewed Utility Center's risk, it does not explain how the Company's risk has been reduced so dramatically as to merit the departure from historical Commission-approved returns on equity for

utilities in Indiana since Utility Center's last rate case filed in August 2007. In this regard, Ms. Ahern noted that Mr. Kaufman's recommended equity cost of 9.2% is 80 basis points lower than the Commission-approved 10% equity cost awarded Indiana American Water company just five months ago in Cause No. 43680.

Ms. Ahern cited a number of sources recognizing that a company's authorized return on equity is fundamental to its ability to attract capital and finance capital expenditures. The investment community certainly considers the regulatory climate and awarded returns on equity in each state that Aqua America has operating companies in order to fully analyze their investment decision. Ms. Ahern stated that the OUCC's proposal could have a significant negative impact on Utility Center and its customers over the long run in that it will contribute to placing Aqua America at a competitive disadvantage in the capital markets, making it more difficult and costly to obtain the capital necessary to finance future infrastructure improvements.

Ms. Ahern also testified as to particular problems in the analyses underlying Mr. Kaufman's testimony recommending a cost of equity of 9.2%. Ms. Ahern pointed out that Mr. Kaufman's application of the CAPM and DCF models utilized outdated information in that Mr. Kaufman relied upon the April 23, 2010 Ratings & Reports for his water proxy group for both the betas for his CAPM application and projected growth rate data for his DCF application. According to Ms. Ahern, however, at the time of the preparation of his direct testimony, the July 23, 2010 Ratings & Reports for his water proxy group were available and should have been used.

Ms. Ahern also pointed out four flaws in Mr. Kaufman's application of the CAPM model. First, Ms. Ahern testified that, since ratemaking and the cost of capital are prospective, it is inappropriate to use historical yields as the risk-free rate in a CAPM analysis as done by Mr. Kaufman. According to Ms. Ahern, while Mr. Kaufman correctly utilized a long-term U.S.

Treasury yield as the risk-free rate, the appropriate yield to use is the prospective yield on long-term U.S. Treasury bonds (notes), rather than relying upon a recent 7-month historical yield. Ms. Ahern testified that the current forecasted consensus yield on long-term U. S. Treasury notes by the nearly 50 economists reporting in Blue Chip Financial Forecasts dated September 1, 2010 is 4.22% for the six quarters ending with the fourth quarter 2009, rising 90 basis points (0.90%) from an estimated 3.8% in the third quarter 2009 to 4.7% in the fourth quarter 2011. Mr. Kaufman's recommended 4.43% historical average yield stands in contrast to the expected yield of 4.7% at the end of 2011.

Second, Ms. Ahern testified that Mr. Kaufman's range of historical market equity risk premiums of 4.40% to 6.00% is incorrectly derived for two reasons, because he incorrectly utilized geometric mean historical returns and incorrectly utilized the total returns on long-term government bonds rather than the correct income return. Ms. Ahern stated that it is the arithmetic mean return, not the geometric mean return that is appropriate for cost of capital purposes. Additionally, Ms. Ahern states that Mr. Kaufman's use of total returns on long-term government bonds ignores clear recommendations to the contrary made by experts that Mr. Kaufman himself relies upon in developing a recommended cost of equity.

The third flaw in Mr. Kaufman's application of the CAPM model identified by Ms. Ahern relates to his use of "market-based" market equity risk premiums. Ms. Ahern testified as to Mr. Kaufman's limited use of the sources he relied upon to develop the market risk premiums he developed and his failure to consider Value Line data, which Ms. Ahern believes is more reliable given the current volatility in both the economy and capital markets.

Finally, Ms. Ahern observed that Mr. Kaufman had failed to apply the Empirical CAPM to account for the fact that Security Market Line ("SML"), as described by the traditional

CAPM, is not as steeply sloped as the predicted SML. According to Ms. Ahern, without application of the Empirical CAPM, Mr. Kaufman has failed to adjust for a recognized limitation in the traditional CAPM model.

In regard to Mr. Kaufman's application of the DCF model, Ms. Ahern expressed as a major concern in his development of the growth rate component of the DCF model. According to Ms. Ahern, Mr. Kaufman ignored the wealth of empirical and academic literature that supports the superiority of analysts' forecasts of EPS as measures of investor expectations. Ms. Ahern stated that, consistent with the EMH, it is appropriate to rely upon such forecasts in a DCF analysis and not utilize historical growth or internal growth as Mr. Kaufman has done.

Ms. Ahern also took issue with the specific growth rates used by Mr. Kaufman in his application of the DCF model. Ms. Ahern testified that Mr. Kaufman's use of both the 5-year and 10-year historical growth in EPS, DPS and BVPS double counts the most recent 5-year period and failed to reflect the current difficult market environment. Ms. Ahern also maintained that Mr. Kaufman's calculated internal growth, based as it is on 2009 data, is not a projected internal growth rate and represents only one-half of the "sustainable growth" method, which has the additional problem of tending to be circular. Finally, Ms. Ahern expressed her disagreement with the range of DCF results that Mr. Kaufman's application of the model yielded.

Ms. Ahern's rebuttal testimony also addressed Mr. Kaufman's criticisms of her testimony recommending a cost of equity of 11.25%. In regard to Mr. Kaufman's criticism of her reliance on forecasted growth rates in earnings per share to estimate growth, Ms. Ahern rejected the contention that analyst forecasts tend to be optimistic. Ms. Ahern pointed out that, under the EMH, investors are aware of the accuracy of and/or any perceived bias in analysts' forecasts and reflect such awareness in the market prices they are willing to pay. In addition, Ms. Ahern cited

recent research showing that conflicted analysts do not mislead investors with optimistic recommendations. Ms. Ahern re-iterated her view that the use of analysts' forecasts of EPS growth should receive significant, if not sole, emphasis when estimating the cost rate of common equity capital. Ms. Ahern also testified that Mr. Kaufman's reliance on a 2003 NRRI study was misplaced since it did not reflect new practices in the security industry.

Ms. Ahern also disputed Mr. Kaufman's criticism of her application of the DCF model. Ms. Ahern pointed out that Mr. Kaufman failed to provide any empirical evidence that the long run growth rate of the U.S. economy is an appropriate proxy for a DCF growth rate for any company, let alone utility companies, including water utilities. As Ms. Ahern observed, the average growth in the U.S. economy, as measured by GDP growth, is just that – an average. Accordingly, some sectors/industries/companies will grow faster than the economy and some will grow more slowly. Thus, in Ms. Ahern's view, there is no basis to implicitly assume, as Mr. Kaufman does, that the earnings of all industries, including the utility/water industry, will grow at the average rate of the economy as a whole as measured by composite GDP growth or that composite GDP growth is an appropriate growth rate for a DCF analysis.

In regard to her application of the CAPM methodology, Ms. Ahern reiterated that, for all the reasons that she previously stated in her direct testimony, the arithmetic mean return, and not the geometric mean return, is appropriate for cost of capital purposes. Similarly, Ms Ahern defended her use of the income return on long-term U.S. Treasury bonds as the risk-free rate in developing an historical market equity risk premium pointing out that Mr. Kaufman's own sources support her position.

Ms. Ahern rejected Mr. Kaufman's criticism of her use of a prospective market risk premium. According to Ms. Ahern, Value Line's 3-5 year Appreciation Potential is no less a

reliable forecast of market expectations than are Value Line's projected five-year growth rates in EPS and DPS relied upon by Mr. Kaufman. Similarly, Ms. Ahern rejected the claim that she overstated the dividend yield in connection with her CAPM analysis. Given that the current yield on the S&P 500 is 2.00% and a recent Value Line median estimated dividend yield is 2.20%, Ms. Ahern insisted that there was little, if any, overstatement of the total market dividend yield in her CAPM analysis.

Ms. Ahern also testified about Mr. Kaufman's incorrect understanding of the ECAPM, which underlies some of his criticism of her application of the CAPM model. According to Ms. Ahern, once it is understood that CAPM and SML do not describe the same relationship, it should be seen that adjusting betas for regression bias and applying the ECAPM are indeed separate and unrelated adjustments. Ms. Ahern surmised that Mr. Kaufman has confused the slope of the SML with beta.

In regard to her RPM analysis, Ms. Ahern notes that Mr. Kaufman's objections are the same as those made in connection with her application of the CAPM model. For the same reasons that she stated in that context, Ms. Ahern does not believe that Mr. Kaufman's objections have merit.

Finally, Ms. Ahern defended her application of CEM. In this regard, Ms. Ahern rejected Mr. Kaufman's contention that companies in her proxy groups of non-utility companies were not comparable to those in her utility proxy groups. Ms. Ahern noted that, while there may be differences, it was clear that the non-utility companies used were part of the same population of companies as those in the water company proxy group. Moreover, Ms. Ahern stated that in arriving at a conclusion of CEM derived common equity cost rate, she eliminated outliers by determining if any of the historical or projected returns are significantly different from their

respective means at the 95% confidence level.

As part of her rebuttal testimony, Ms. Ahern also updated the analyses reflected in her direct testimony and underlying her recommended cost of equity and overall rate of return. Using more current information, but applying the same four common equity models in the same way in which she previously applied them, Ms. Ahern reaffirmed her recommendation that a rate of return of 8.195% based on a common equity cost rate of 11.25% was appropriate for Utility Center under current economic conditions.

(iv) **Cost of Equity Discussion and Findings.** The record contains a number of different methods of estimating Petitioner's cost of common equity. The Commission recognizes that the cost of common of equity cannot be precisely calculated and estimating it requires the use of judgment. Due to this lack of precision, the use of multiple methods is desirable because no single method will produce the most reasonable results under all conditions and circumstances.

The OUCC recommended a return of 9.2% on equity capital. However, the foregoing discussion of the evidence demonstrates that the OUCC's recommendation is too low given limitations in its approach, current levels of capital costs and prevailing economic conditions.

Petitioner on the other hand proposes a return on common equity of 11.25%. This recommended return on common equity is a result of the consolidation of four separate, widely recognized valuation methodologies. Although the Commission tends to primarily rely of the DCF model in determining a regulated utilities cost of common equity, the particular facts and circumstances of this case and the current economic environment, dictate that the approach used by the Petitioner's witness Ms. Ahern of employing four widely recognized and determinable methods, coupled with a modest 20 basis point adjustment, is fair and reasonable and should be

adopted, together with her recommended equity cost rate of 11.25%.

C. **Debt Cost.** Ms. Ahern testified that a long-term debt cost rate of 5.14% represented the cost rate of the allocated debt from the parent company to Aqua Indiana, Inc and is appropriate for use in a cost of capital determination for Utility Center. According to Ms. Ahern, a long-term debt cost rate of 5.14% is conservative given the average yield of 5.73% for the three months ended January 2010 on Moody's A rated public utility bonds; the prospective yield of 6.12% on Moody's A rated public utility bonds; and in light of Utility Center's small size which exacerbates its credit risk. The OUCC agreed that use of a 5.14% debt rate was appropriate.

D. **Fair Rate of Return and Net Operating Income.** The following standards and criteria are applicable to a determination of the fair rate of return on Petitioner's investment in its utility plant:

- (i) Return comparable to return on investments in other enterprises having corresponding risks;
- (ii) Return sufficient to ensure confidence in the financial integrity of the Petitioner;
- (iii) Return sufficient to maintain and support Petitioner's credit [rating];
- (iv) Return sufficient to attract capital as reasonably required by the Petitioner in its utility business.

One recognized method for evaluating the reasonableness of a utility's allowed return involves investigation of the utility's capital structure. From such an investigation, the Commission can develop the overall weighted cost of capital. In this Cause, the evidence and the findings made above support the Commission finding Petitioner's weighted cost of capital is as follows:

| <u>Class of Capital</u> | <u>% of Total</u> | <u>% Cost</u> | <u>Weighted Cost</u> |
|-------------------------|-------------------|---------------|----------------------|
| Long Term Debt | 50% | 5.14 | 2.57% |
| Common Equity | 50% | 11.25 | <u>5.63%</u> |
| | | | 8.195% |

Having previously determined that the fair value of rate bases of Petitioner's water and sewage disposal utilities are represented by their original cost rate bases of \$24,707,961 and \$32,000,273, respectively, the Commission also finds that Petitioner's weighted cost of capital of 8.195% represents its fair rate of return. Applying that fair rate of return to the fair value rate bases for Petitioner's water and sewage disposal utilities generates net operating income of \$2,024,771 for the water utility and \$2,622,362 for the sewage disposal utility. Further, those net operating incomes adequately and fairly compensate Petitioner for its investments, while maintaining Petitioner's financial viability.

8. Operating Results at Present Rates.

A. Water Utility.

(i) **Operating Revenues.** Petitioner and the OUCC are in agreement on Petitioner's pro forma annual revenues at present rates, except in regard to one issue. They disagree on whether revenues received from allowing cellular telephone antennas to be placed on water system facilities should be treated as an "above the line" as operating revenue. The OUCC's witness Richard Corey maintained that treating such revenue as operating revenue was appropriate because it is derived from the use of assets included in Petitioner's rate base. The OUCC also apparently maintains that the antennae revenues constitute "rental income" that is classified as operating revenue under Account 472 in the Uniform System of Accounts. Petitioner's Robert A. Kopas pointed out, however, that the Commission has addressed this issue in the past and determined that, although income, it was wrong to classify antennae revenue as operating revenue.

The Commission addressed this issue in its November 18, 1998 Order in Cause No. 40974-U. In that decision, the Commission found as follows:

Although the cellular tower rental income does constitute income, it is erroneous to classify it as operating income. We classify this rental income as "other income" similar to interest income; therefore, the cellular tower rental income should not be included in the net operating revenues for purposes of calculating return on rate base.

In Re Riverside Water Company, Cause No. 40974-U (Nov. 18, 1998) at 3. The Commission re-affirmed that determination in its December 29, 1998 Order on Petition for Reconsideration in Cause No. 40974-U and also rejected the OUCC's argument that Account 472 of the Uniform System of Accounts required the income be treated as operating revenue. The Commission also reached the same conclusion in its February 19, 2003 Order in Cause No. 42122 involving the same utility.

Mr. Corey's testimony provides no basis for the Commission to deviate from its long-held position on the proper treatment of antennae revenue as a "below-the-line expense. Consequently, Petitioner's proposed pro forma annual revenues at present rates of \$6,276,192 should be accepted.

(ii) **Operating Expenses**. Petitioner proposed in its case-in-chief pro forma operating expenses of \$4,837,695. The OUCC, however, proposed total operating expenses of \$4,791,135. The OUCC's position reflected its acceptance of many of Petitioner's proposed adjustments to its test year expenses. Further, Petitioner accepted on rebuttal a number of the adjustments the OUCC had proposed in its case-in-chief. The pro forma adjustments on which there still is disagreement between Petitioner and the OUCC are addressed below.

(a) **Salaries and Wages**. Petitioner proposed to adjust its test year expenses related to this account by \$50,419. The OUCC's witness Mr. Corey, however, proposed only an adjustment of \$22,926, a 3% increase, arguing that Petitioner had not supported the overtime and capitalized labor amounts reflected in its proposed adjustment. Petitioner's witness Mr. Bobby

D. Estep disagreed with Mr. Corey testifying that Petitioner had provided the OUCC with a detailed schedule showing the capital and overtime labor amounts for each employee reflected in the adjustment. Further, Mr. Estep testified concerning test year and pro forma amounts for each of those expenses.

Additionally, Mr. Estep pointed out that Mr. Corey's proposed adjustment, by relying on the test year balances, failed to reflect the filling of a new position within twelve months of the test year. Mr. Estep also pointed out that there had been two, not just one, 3% wage increase during the test year and the twelve months following it.

Based on the evidence presented, the Commission finds that Petitioner's proposed adjustment of \$50,419 should be accepted as reasonable. The amount of Petitioner's pro forma salary and wages expense is \$583,653.

(b) **Pensions and Benefits.** Petitioner proposed to adjust its test year employee benefit expense by \$56,249 to reflect increased level of benefit expenses. The OUCC, however, proposes only to adjust it by \$38,432. The difference between the two positions, \$17,817, relates to whether the health insurance benefit reflected in the adjustment is accurate and how an arithmetic error should be allocated between Petitioner's water and sewage disposal utilities.

According to Mr. Corey, the OUCC proposed adjustment reflects Petitioner's current health insurance premiums as shown on a recent Blue Cross invoice. Mr. Estep pointed out that Petitioner's health insurance benefit not only reflects the Blue Cross premiums, but also includes an employee prescription drug plan. According to Mr. Estep, the Company self-funds the prescription drug plan, so there were no invoices for the OUCC to examine. However, the prescription drug plan and Blue Cross cost were reflected in Petitioner's proposed adjustment. Also, Mr. Estep pointed out that the OUCC assumed an across the board employee contribution

of 20% to the prescription drug plan, but in actuality, employee contributions vary in amounts ranging from 15% to 25% based on the employees pay grade. Mr. Estep stated that the average employee contribution is 17.66%.

Mr. Estep, while agreeing with the need to correct an arithmetic error of \$19,802 discovered by Mr. Corey, disagreed that the expense decrease associated with it should be allocated equally between Petitioner's water and sewage disposal utilities as proposed by Mr. Corey. Mr. Estep stated that, as reflected in Petitioner's proposed adjustment, \$19,073 should be allocated to the sewage disposal utility and \$739 to the water utility.

In light of the evidence presented, the Commission finds that Petitioner's proposed adjustment of \$56,249 should be accepted as reasonable. The amount of Petitioner's pro forma employee benefits expense is \$98,095.

(c) **Contractual Services – Management.** Petitioner proposed an adjustment of \$47,109 to reflect increases in the fees it pays for services from certain affiliated companies. The OUCC did not dispute the appropriateness of such fees, but it contended that the adjustment should be limited to \$6,941, which reflects the same 3% increase it proposed to make to Petitioner's test year payroll expense. Petitioner's witness Robert Kopas disagreed with the OUCC's proposed adjustment first pointing out that, as was the case with payroll expense, the OUCC failed to recognize there have been two wage increases since the beginning of the test year, not just one. Mr. Kopas also testified that the OUCC's adjustment also failed to reflect, as Petitioner's pro forma amount does, a net increase in positions due in part to the filling of vacancies reflected in the test year.

Mr. Kopas also testified concerning the basis for Petitioner's proposed adjustment for management fees. According to Mr. Kopas, increases in labor-related expenses of the type the

OUCC has accepted with regard to employee benefits contribute to the increase in management fees, as do increases in necessary non-labor related costs such as satisfying International Financial Reporting Standards and Sarbanes-Oxley compliance. Mr. Kopas also testified that Petitioner's proposed adjustment for management fees reflects an updated and more accurate allocation to Aqua Indiana of services and sundry charges based on an updated customer count. Lastly, Mr. Kopas noted that Petitioner had provided support for this allocation to the OUCC.

Mr. Kopas also supported Petitioner's adjustment with a comparison of Petitioner's management fees to those of Indiana American Water Company as discussed in the Commission's April 30, 2010 Order in Cause No. 43680. According to Mr. Kopas, while the Commission approved a management fee of \$66 per customer for Indiana American, Utility Center has only requested a management fee which, when including regional costs included in the miscellaneous account, is approximately \$30 per customer.

Based on Mr. Kopas' testimony on Petitioner's proposed adjustment to its test year for contractual services-management, the Commission finds that adjustment of \$47,109 should be accepted as reasonable. The amount of Petitioner's pro forma contractual services-management expense is \$241,625.

(d) **Contractual Services – Other.** Petitioner used this account to reflect an adjustment to its test year expenses reflecting implementation of the Meritage project discussed above. In this regard, Petitioner proposed an increase to its test year expenses of \$23,742 to reflect the net effect of the cost increases and decreases associated with implementing the Meritage project. The OUCC, however, proposed a reduction to Petitioner's proposed adjustment of \$38,779 in order to reflect employee costs associated with two customer service representative positions in Petitioner's Fort Wayne offices that, according to Mr. Corey, should not be the responsibility of

Petitioner's customers. However, according to Mr. Kopas and Mr. Etzler the positions the OUCC believes should not be reflected in Petitioner's pro forma expenses are not call center customer service representatives like those that work in the regional call centers that are part of the Meritage project and are needed as a critical liaison between operations and customer service activities.

According to Mr. Etzler, the transition of functions to the regional customer call centers through implementation of the Meritage project was and is to provide better management of similar functions over the entire company: bill processing; handling billing questions; coordinating customer move-in / move-out; and payment processing. Mr. Etzler testified, however, that there were still significant customer needs that have to be managed at the local office. Mr. Etzler stated that the local office staff handle permits for new home sewer and water connections; work with developers on new subdivision construction, i.e. processing construction drawings, submitting IDEM construction permits, managing developer contracts; processing home owner agreements and payments for our construction loan program; meter rentals and service billing for contractors; coordinate utility locate requests; coordinate and dispatch service orders to field technicians; coordinate service shut offs and turn-ons; handle emergency calls; coordinate meter repairs and replacements; download and analyze meter route notes to create service orders for meter and MXU testing, repair, or replacement; and assist customers that come into the office. Mr. Etzler stated that the work required to handle these functions requires a supervisor and part time person to effectively manage these processes and therefore will be a continuing responsibility for the local office.

Based on Mr. Kopas' and Mr. Etzler's detailed explanation of the need for the positions that the OUCC effectively seeks to eliminate from Petitioner's costs, it is clear that the OUCC's

proposed reduction cannot be accepted. The Commission finds that Petitioner's proposed adjustment of \$23,742 associated with the implementation of the Meritage project is reasonable and should be accepted without reduction. Together with an uncontested adjustment of \$41,000 associated with the cleaning of certain of Petitioner's facilities, the pro forma adjustment for contractual service-other should be \$64,742, with the resulting pro forma expense being \$178,612.

(e) **Regulatory Expense**. Petitioner's and the OUCC's respective cases-in-chief show a disagreement over the total amount of legal, accounting and other rate case expenses that should be reflected in Petitioner's rates. However, Mr. Kopas testified on rebuttal that Petitioner accepted the OUCC's position on the issue, i.e., \$326,689. Nevertheless, while the parties agree on the proper amount of rate case expense, they disagree on the proper period over which that amount should be amortized. The OUCC argues that it should be amortized over 5 years, which results in an adjustment to test year expense of \$11,832. On the other hand, Petitioner's proposed amortization period of 3.5 years results in an adjustment of \$39,834.

Mr. Corey testified in support of the OUCC's proposed 5-year amortization period asserting that it represented the life of the rates being set and the time within which Petitioner could be expected to initiate its next rate case. Mr. Kopas, however, testified on rebuttal that Utility Center's proposed 3.5-year amortization period was more representative of the life of the rates to be set in this Cause. According to Mr. Kopas, Utility Center still is faced with the need to make significant improvements to its water and wastewater systems, which makes it more likely that Utility Center will have to seek another rate increase sooner than 5 years in the future. Moreover, Mr. Kopas' noted that history supported the use of a 3.5-year period. Utility Center's current rates were approved by the Commission's August 27, 2008 Order in Cause No. 43331,

approximately 2.5 years before the procedural schedule adopted in this Cause calls for the Commission to enter its Final Order.

Based on the evidence presented, the Commission finds that 3.5 years is a more reasonable estimate of the life of the rates to be approved in this Cause and accepts Petitioner's proposed adjustment to its test year regulatory expense of \$39,834. The resulting pro forma expense is \$93,340.

(f) **Miscellaneous Expense.** As part of its miscellaneous expense account Petitioner proposes to remove from its test year expenses certain public relations expenses, as well as certain other expenses identified by the OUCC. The amount of this undisputed reduction in test year expense is \$57,740. Petitioner also proposes to adjust other test year expenses related to certain intercompany costs recorded as part of its miscellaneous account. The amount of Petitioner's proposed additional adjustment to the test year expenses in this account is \$11,659. While the OUCC does not disagree with reflecting this type of expense in Petitioner's rates, it disagrees with the amount of Petitioner's proposed additional adjustment amount. Instead of \$11,659, the OUCC proposes the adjustment be limited to \$3,223. This amount reflects the same 3% increase in test year expenses the OUCC proposed in other contexts discussed above.

As reflected in Mr. Kopas' testimony, Petitioner's opposition to the OUCC's proposed adjustment rests on the same basis as its objection to the adjustment proposed for contractual services-management. Further, Petitioner provided as part of its rebuttal evidence a detailed breakdown of the expenses it anticipates incurring and which are reflected in its proposed adjustment. Mr. Kopas also noted in support of Petitioner's proposed adjustment amount that the regional costs and management fees proposed to reflect in its rates are less than half those recently allowed to Indiana American on a per customer basis.

In light of prior findings and the information provided by Petitioner in support of its proposed adjustment, we find that the adjustment related to the intercompany costs covered in Petitioner's miscellaneous account should be \$11,659, which when combined with the undisputed adjustment to the balance of the costs reflected in that account result in a total reduction in test year miscellaneous expense of (\$46,080) and pro forma expense at present rates of \$804,897.

(g) **Uncollectible Expense.** Petitioner expressed agreement with the methodologies used by the OUCC to calculate a pro forma uncollectible account expense. As is the case in regard to some of the taxes other than income and synchronized interest, Petitioner's agreement did not extend to the determinants used by the OUCC to calculate the appropriate adjustments for this expense item. When those determinants as found above are used, the proper pro forma adjustment amount is, as proposed by Petitioner, \$12,394, with the resulting pro forma expense being \$24,704.

(h) **Depreciation Expense.** Petitioner's and the OUCC's proposals concerning depreciation expense are very close. Petitioner proposes an adjustment to test year depreciation expense of \$78,194. The OUCC, on the other hand, proposes an adjustment of \$77,596. Petitioner's determination of its pro forma depreciation expense, however, reflects more accurate information concerning depreciation related to the major projects and makes certain additional small adjustments in the calculation of an appropriate adjustment. Accordingly, the Commission accepts Petitioner's adjustment of \$78,194 to its test year depreciation expense of \$692,216. The resulting pro forma expense is \$770,410.

(i) **Taxes Other than Income.** A major point of disagreement between Petitioner and the OUCC as expressed in their respective cases-in-chief related to the proper adjustment to be

made for property taxes. However, at the October 5 hearing Mr. Corey expressed the OUCC's agreement with Petitioner's position in this regard. Accordingly, the proper adjustment to be made to Petitioner's test year property tax expense is a reduction of \$2,596, not \$19,032 as originally proposed by the OUCC.

In its rebuttal case, Petitioner expressed agreement with the methodologies used by the OUCC to calculate the other items covered by taxes other than income; namely the utility receipts tax, public utility fee and payroll taxes. Petitioner's agreement, however, did not extend to the determinants used by the OUCC to calculate the appropriate adjustments for those expense items, all of which have been found above. Therefore, based on the findings above, the Commission finds that the following adjustments should be made to the corresponding test year expenses:

| | | |
|----------------------|---|----------|
| Utility Receipts Tax | - | \$21,993 |
| Public Utility Fee | - | \$2,532 |
| Payroll Taxes | - | \$2,898 |

With these adjustments, the total adjustment in this account is \$24,826, with the total pro forma expense at present rates being \$619,703.

(j) **State and Federal Income Taxes**. Mr. Kopas expressed Petitioner's general agreement with the methodology used by the OUCC to calculate state and federal income taxes. However, as Mr. Kopas noted, the parties disagree on the amount of the determinants reflected in the synchronized interest calculation, i.e., rate base amount and the weighted cost of debt. When the amounts for those determinants found above are used, synchronized interest becomes \$634,948 and the adjustments to Petitioner's state and federal income tax expenses become \$13,662 and \$18,394, respectively. The total pro forma expense at present rates attributable to state and federal income taxes are \$124,054 and \$436,639, respectively.

(iii) **Water Utility's NOI under Present Rates.** Based upon the foregoing findings, we find Petitioner's pro-forma net operating income under present rates to be as follows:

| | | |
|--------------------------|-----------------|--------------------|
| Operating Revenues | | \$6,276,192 |
| O&M Expenses | | |
| Uncontested Expenses | \$792,267 | |
| Salaries and Wages | \$583,653 | |
| Pensions and Benefits | \$98,095 | |
| Contract. Svcs. - Mgmt. | \$241,625 | |
| Contract. Svcs. - Other | \$178,612 | |
| Regulatory Expense | \$93,340 | |
| Miscellaneous | \$804,897 | |
| Uncollectible | <u>\$24,704</u> | |
| Subtotal | | \$2,817,193 |
| Other Operating Expenses | | |
| Depreciation Expense | \$ 770,410 | |
| Acq. Adj. Amort. | \$ 62,346 | |
| Taxes other than Income | \$ 619,703 | |
| State Income Taxes | \$ 124,054 | |
| Federal Income Taxes | \$ 436,639 | |
| Subtotal | | <u>\$2,013,151</u> |
| Total Operating Expense | | <u>\$4,830,344</u> |
| Net Operating Income | | <u>\$1,445,848</u> |

We further find that the net operating income available to Petitioner for return under its present rates for water utility service of \$1,445,848 is insufficient to provide a fair return on the fair value of its properties used and useful in providing water service for the convenience of the public, and is therefore unjust and unreasonable and should be increased.

B. Sewage Disposal Utility.

(i) **Operating Revenues.** Petitioner and the OUCC are in agreement concerning Petitioner's pro forma annual revenues at present rates and the Commission finds, as proposed by Petitioner, Petitioner's pro forma annual revenues at present rates are \$7,296,468.

(ii) **Operating Expenses.** Petitioner proposed in its case-in-chief pro forma operating

expenses of \$5,435,793. The OUCC, however, proposed total operating expenses of \$5,266,712. The OUCC's position reflected its acceptance of many of Petitioner's proposed adjustments to its test year expenses. On rebuttal, Petitioner accepted a number of the adjustments the OUCC had proposed. The pro forma adjustments on which there still is disagreement between Petitioner and the OUCC are addressed below.

(a) **Salaries and Wages.** For the reasons set forth in Finding No. 8(A)(ii)(a) above, the Public's proposal for salaries and wages attributable to Petitioner's sewage disposal utility cannot be accepted. The proper proposed pro forma adjustment amount is, as proposed by Petitioner, \$71,315, with the resulting pro forma expense being \$641,145.

(b) **Pensions and Benefits.** For the reasons set forth in Finding No. 8(A)(ii)(b) above, the Public's proposal for pensions and benefits attributable to Petitioner's sewage disposal utility cannot be accepted. The proper proposed pro forma adjustment amount is, as proposed by Petitioner, \$36,855, with the resulting pro forma expense being \$93,952.

(c) **Contractual Services – Management.** For the reasons set forth in Finding No. 8(A)(ii)(c) above, the Public's proposal for contractual services – management attributable to Petitioner's sewage disposal utility cannot be accepted. The proper proposed pro forma adjustment amount is, as proposed by Petitioner, \$45,945, with the resulting pro forma expense being \$239,956.

(d) **Contractual Services – Other.** For the reasons set forth in Finding No. 8(A)(ii)(d) above, the Public's proposal for contractual service - other attributable to Petitioner's sewage disposal utility cannot be accepted. The proper proposed pro forma adjustment amount is, as proposed by Petitioner, \$37,140, with the resulting pro forma expense being \$320,443.

(e) **Regulatory Expense.** For the reasons set forth in Finding No. 8(A)(ii)(e) above, the

Public's proposal for rate case expense attributable to Petitioner's sewage disposal utility cannot be accepted. The proper proposed pro forma adjustment amount is, as proposed by Petitioner, \$24,318, with the resulting pro forma expense being \$107,444.

(f) **Miscellaneous Expense**. For the reasons set forth in Finding No. 8(A)(ii)(f) above, the Public's proposal for miscellaneous expense attributable to Petitioner's sewer operation cannot be accepted. The proper proposed pro forma adjustment amount is, as proposed by Petitioner, \$(40,268), with the resulting pro forma expense being \$838,660.

(g) **Uncollectible Expense**. For the reasons set forth in Finding No. 8(A)(ii)(j) above, the Public's proposal for uncollectible expense attributable to Petitioner's sewage disposal utility cannot be accepted. The proper pro forma adjustment amount is, as proposed by Petitioner, \$16,419, with the resulting pro forma expense being \$28,720.

(h) **Depreciation Expense**. For the reasons set forth in Finding No. 8(A)(ii)(h) above, the Public's proposal for depreciation expense attributable to Petitioner's sewage disposal utility cannot be accepted. The proper proposed pro forma adjustment amount is, as proposed by Petitioner, \$22,002, with the resulting pro forma expense being \$1,082,808.

(i) **Taxes Other than Income**. For the reasons set forth in Finding No. 8(A)(ii)(i) above, the Public's proposal for taxes other than income attributable to Petitioner's sewage disposal utility cannot be accepted. The proper proposed pro forma adjustment amount is, as proposed by Petitioner, \$58,733, with the resulting pro forma expense being \$585,975.

(j) **State and Federal Income Taxes**. For the reasons set forth in Finding No. 8(A)(ii)(j) above, the Public's proposal for state and federal income taxes attributable to Petitioner's sewage disposal utility cannot be accepted. When the proper determinants are used, synchronized interest becomes \$822,347 and the adjustments to Petitioner's state and federal income tax

expenses become \$50,550 and \$153,109, respectively. The total pro forma expense at present rates attributable to state and federal income taxes are \$159,587 and \$565,513, respectively.

(k) **Contractual Services-Legal.** Utility Center originally requested the Commission's approval for it to defer as a regulatory asset approximately \$437,246 in legal fees and costs it has incurred and amortize them over ten years. The resulting annual amortization would be \$43,725. Petitioner would reflect the annual amortization among its operating expenses for purposes of setting the recurring monthly rates and charges proposed in this Cause and in future Causes. Subsequent to the filing of its case-in-chief, however, Petitioner determined that the full amount of the legal fees and costs incurred was approximately \$509,600, but indicated that the higher amount should be amortized over a slightly longer period, *i.e.*, 11.66 years, in order to maintain the annual amortization amount at \$43,725.

As explained by Mr. Etzler, the legal fees and costs Petitioner is seeking to have treated as a regulatory asset and amortized arise from the attempt by two homeowner associations to have Utility Center prematurely shut down its Main Aboite WWTP on the basis of a purported agreement to do so. Utility Center contested the position of those associations concerning the existence of the purported agreement and initiated a proceeding, Cause No. 43666, to obtain a determination from the Commission on the appropriateness of shutting down the Main Aboite WWTP. A portion of the legal fees and costs associated with the deferral request include those incurred in connection with Cause No. 43666, with the balance related to a lawsuit filed by the homeowner associations in a local court. As reflected in the Commission's September 8, 2010 Order in Cause No. 43666, the disputes between Petitioner and the homeowner associations have been settled without the need for Petitioner to shut down its Main Aboite WWTP.

According to Mr. Etzler, Utility Center's Main Aboite WWTP is essential to the

continued cost-effective provision of sewage disposal utility service to the public in Allen County's Aboite Township. In fact, the expansion and improvement of the Main Aboite WWTP has been part of Utility Center's master plan approved by the Commission pursuant to its August 31, 2005 Order in Cause No. 41187. Mr. Etzler further testified that, if required to shut the Main Aboite WWTP down, Utility Center would incur the substantial expense of building another treatment plant to provide for the treatment of wastewater flows now handled by the Main Aboite WWTP. Petitioner's active participation and settlement of its disputes with the homeowner associations will keep the Main Aboite WWTP in operation and save the ratepayers of Petitioner's sewage disposal utility millions of dollars.

The OUCC, as well as Intervenor Fort Wayne, opposed allowing Petitioner to reflect in its rates the deferred legal fees and costs alleging that the disputes with the homeowner associations were the result of imprudence. On rebuttal, Mr. Kopas testified that legal fees and costs are part of doing business for any utility and are typically included in the normal course of a rate case proceeding. As Mr. Kopas noted, in this instance the legal fees and costs emanated from disputed claims just like other customer complaints and lawsuits often are and the Petitioner is under no obligation to defend itself. Not defending itself in this instance, however, would have resulted in even greater costs to ratepayers.

In resolving this matter, it is important to draw a distinction between legal fees and costs incurred to prosecute or defend a legal action and the costs incurred as a result the outcome of the action. Here, Petitioner is not seeking to recover through rates any part of the substantial costs it has and will incur as part of its settlement with the homeowner associations. Petitioner is only seeking to recover those legal fees and expenses that were incurred in order to achieve

that settlement. Given the consequences if Petitioner had not resisted the claims of the homeowner associations, the incurrence of those fees and costs was reasonable.

Underscoring the reasonableness of permitting the recovery of the legal fees and costs as part of the proposed deferral is that Petitioner's has not proposed to reflect in its rates any level of on-going legal expense aside from those related to the disputes over the Main Aboite WWTP. However, as testified to by Mr. Kopas, from 2004, through 2008, Petitioner incurred on average legal expense was \$50,675 in connection with the operation of its sewage disposal utility from causes other than the dispute with the homeowners associations. Moreover, as Mr. Kopas also indicated, Petitioner's current rates reflect the recovery of legal costs of \$44,748. Clearly, the nature of operating Petitioner's sewage disposal utility brings with it numerous typical, as well as unforeseen, issues that require a level of legal expenses of no less than the \$43,725, which Petitioner has proposed on a pro forma basis.

(iii) **Sewage Disposal Utility's NOI under Present Rates.** Based upon the foregoing findings, we find Petitioner's pro-forma net operating income under present rates to be as follows:

| | | |
|--------------------------|-----------------|-------------|
| Operating Revenues | | \$7,296,468 |
| O&M Expenses | | |
| Uncontested Expenses | \$683,600 | |
| Salaries and Wages | \$641,145 | |
| Pensions and Benefits | \$93,952 | |
| Contract. Svcs. - Mgmt. | \$239,956 | |
| Contract. Svcs. - Other | \$320,443 | |
| Regulatory Expense | \$107,444 | |
| Miscellaneous | \$838,660 | |
| Uncollectible | <u>\$28,720</u> | |
| Subtotal | | \$2,953,920 |
| Other Operating Expenses | | |
| Depreciation Expense | \$1,082,808 | |
| Acq. Adj. Amort. | \$76,080 | |
| Taxes other than Income | \$585,975 | |
| State Income Taxes | \$159,587 | |

| | | |
|-------------------------|-----------|--------------------|
| Federal Income Taxes | \$565,513 | |
| Subtotal | | <u>\$2,469,962</u> |
| Total Operating Expense | | <u>\$5,423,882</u> |
| Net Operating Income | | <u>\$1,872,586</u> |

We further find that the net operating income available to Petitioner for return under its present rates for water utility service of \$1,872,586 is insufficient to provide a fair return on the fair value of its properties used and useful in providing water service for the convenience of the public, and is therefore unjust and unreasonable and should be increased.

9. **Authorized Rate Increase.**

A. **Water Utility.** Petitioner should be permitted to increase the revenue generated by service and volumetric rates and charges associated with the sale of water to ultimate customers by \$993,685 to produce total annual operating revenues of \$7,269,878 and net operating income of \$2,024,771. The estimated financial results arising from this revenue increase, i.e., 15.83%, for Petitioner's water utility are as follows:

| | | |
|--------------------------|--------------------|--------------------|
| Total Operating Revenues | | \$7,269,878 |
| Less: | | |
| O&M Expenses | \$2,821,104 | |
| Other Operating Expenses | <u>\$2,424,003</u> | |
| Total Operating Expense | | <u>\$5,245,107</u> |
| Net Operating Income | | <u>\$2,024,771</u> |

The determinations in the preceding table reflect the effect of additional revenue on federal and state income taxes and Indiana gross receipts tax.

B. **Sewage Disposal Utility.** Petitioner should be permitted to increase the revenue generated by its service and volumetric rates and charges associated with sewage disposal service to ultimate customers by \$1,286,945 to produce total annual operating revenues of \$8,583,413 and net operating income of \$2,622,362. The estimated financial results arising from this revenue increase, i.e., 17.64%, for Petitioner's sewage disposal utility are as follows:

| | |
|--------------------------|--------------------|
| Total Operating Revenues | \$8,583,413 |
| Less: | |
| O&M Expenses | \$2,958,985 |
| Other Operating Expenses | <u>\$3,002,066</u> |
| Total Operating Expense | <u>\$5,961,051</u> |
| Net Operating Income | <u>\$2,622,362</u> |

The determinations in the preceding table reflect the effect of additional revenue on federal and state income taxes and Indiana gross receipts tax.

C. **Ultimate Finding.** Based on the evidence and giving appropriate weight to the need for Petitioner to discharge its public duties and to earn a return commensurate with that earned by enterprises of corresponding risk, the Commission finds that rates estimated to produce the results described in Finding No. 9(A) and (B) are just and fair and should allow Petitioner the opportunity to earn a reasonable return on its property dedicated to providing water and sewage disposal utility services to the public.

10. **Method of Implementing Rate Increases.** Petitioner's proposed rates schedules for its water and sewage disposal utilities are set forth in Petitioner's Exhibits WLGE-3 and WLGE-4, respectively. Neither the OUCC nor Intervenor raised any issues related to the manner in which Petitioner proposes to implement its requested rate increases, except in regard to the minimum usage charge provision set forth in Petitioner's schedule of water rates and charges.

In regard to the minimum usage charge provision, the OUCC recommended that the Commission require Petitioner to perform a rate design study as part of its next rate case. As part of the study, the OUCC recommended that Petitioner compare its current minimum usage with new minimums, so that the Commission and the OUCC can determine how a particular customer would be affected. While agreeing with the OUCC's recommendation that a rate design study be performed, Intervenor suggested it should be made the subject of a sub-docket proceeding in this Cause.

Petitioner's witness William Etzler expressed Petitioner's agreement with the OUCC's recommendation that it conduct a rate design study of the type the OUCC's witness Roger Pettijohn described in his testimony. Mr. Etzler was of the opinion that through such a study, the advantages and disadvantages of moving away from the use of a minimum usage charge can be properly assessed. Mr. Etzler, however, disagreed with Intervenor's suggestion that the rate design study become the subject of a sub-docket in this proceeding. Mr. Etzler testified that given where this case is, conducting a sub-docket proceeding in this Cause did not make sense.

The Commission agrees with the OUCC's recommendation and finds no reason to accept the Intervenor's suggestion. Petitioner should perform a rate design study to be filed as part of its next rate case. As part of the study, Petitioner should compare its current minimum usage with new minimums to determine how a particular customer would be affected by a new minimum usage charge.

Based on the evidence presented and its previous findings, the Commission finds the rates schedules appearing as Petitioner Exhibits WLGE-3 and WLGE-4, as modified to accord with Finding No. 9(A) and (B), are fair, just, reasonable and non-discriminatory. Therefore, Petitioner should file its proposed rates and rate schedules, with any modification applied evenly and uniformly to all recurring rates and charges associated with customer sales to provide the revenue increase authorized herein.

11. **Rules and Regulations.** As part of the relief requested in this Cause, Petitioner has asked that the Commission approve for use the revised Rules and Regulations appearing as Petitioner's Exhibits WLGE-9 and WLGE-10. According to Mr. Etzler, Utility Center's current Rules and Regulations have only been amended once since their original approval in the 1980s and the proposed Rules and Regulations reflect a wholesale revision of the current Rules and

Regulations. In addition to bringing Petitioner's Rules and Regulations current with Commission requirements and the needs of our customers, Mr. Etzler stated that the differences between Petitioner's current and proposed Rules and Regulations reflect a reformatting, an update of definitions and corrections to typographical errors and omissions.

Intervenor's witness Mr. Nitza again argued that the Commission should create a sub-docket proceeding in this Cause in order to consider Petitioner's proposed Rules and Regulations. Mr. Etzler disagreed, however, and testified that a sub-docket proceeding was unnecessary.

Mr. Etzler pointed out that Utility Center's proposed Rules and Regulations reflect provisions that the Commission has already approved or the requirements of Commission-promulgated regulations. According to Mr. Etzler, the starting point used by Utility Center to prepare its proposed Rules and Regulations were the rules and regulations approved by the Commission's June 19, 2002 Order in Cause No. 42190 for Consumers Indiana Water Company ("Consumers"), an affiliate of Utility Center providing service in Lake County, Indiana. Since Consumers' Commission-approved Rules and Regulations were the starting point for Utility Center's own proposed Rules and Regulations a great many of the provisions in each are identical.

Mr. Etzler also pointed out that, while containing many identical provisions, Utility Center's proposed Rules and Regulations do not reflect a wholesale adoption of Consumer's Rules and Regulations. According to Mr. Etzler, Utility Center's proposed Rules and Regulations also incorporate provisions from its existing Commission-approved Rules and Regulations. By way of an example, Mr. Etzler identified Section 8 of the proposed Rules and Regulations for Water Service and Section 6 of the proposed Rules and Regulations for Sewer

Service, which are identical to provisions of Utility Center's existing Rules and Regulations approved by the Commission on March 11, 2009. Mr. Etzler also pointed out that some portions of Utility Center's proposed Rules and Regulations follow current regulations of the Commission. As an example of this, Mr. Etzler identified Section 7 of the proposed Rules and Regulations for Water Service and Section 5 of the proposed Rules and Regulations for Sewer Service, both of which deal with main extensions and track the Commission's regulations on the subject.

Mr. Etzler was of the opinion that, given that the provisions of the proposed Rules and Regulations have been approved by the Commission at one time or another, a sub-docket was not needed to consider the appropriateness of the proposed Rules and Regulations. Further, Mr. Etzler testified that a sub-docket would entail an unnecessary expenditure of time and other resources on the part of Utility Center and the Commission.

Mr. Etzler also testified that, to the extent any specific provisions of the proposed Rules and Regulations were of concern to the Commission, the Commission could disapprove them and direct they be removed from Utility Center's proposed Rules and Regulations, or re-written in some way, before the proposed Rules and Regulations are filed with the Commission's staff after issuance of a Final Order in this Cause. As Mr. Etzler testified, if Utility Center believes any disapproved provision is necessary or should remain in its Rules and Regulations, Utility Center can seek Commission approval for the provision in another proceeding or pursuant to the Commission's thirty-day procedures. At that time, concerns over the specific provision can be addressed without causing a delay in implementing the other provisions of the proposed Rules and Regulations that have already been addressed by the Commission.

The Commission recognizes that Petitioner's proposed Rules and Regulations reflect

provisions that have already been subject to Commission review and approval. Nevertheless, Sections 1.2.8, 1.2.10, 1.6.1.1, 1.6.1.7 and 2.4 of the proposed Rules and Regulations for Water Service, i.e., Petitioner's Exhibit WLGE-9, were the subject of questions by the Presiding Commissioner or Presiding Administrative Law Judge at the hearing held in this Cause on July 1, 2010. These questions reflected concern about the appropriateness of those provisions. Concern about these provisions, however, does not require that the Commission refuse to approve the balance of the proposed Rules and Regulations and instead conduct a sub-docket proceeding on them. Accordingly, we adopt Mr. Etzler suggestion. The Petitioner's proposed Rules and Regulations appearing as Petitioner's Exhibits WLGE-9 and WLGE-10 should be approved, with the exception of Sections 1.2.8, 1.2.10, 1.6.1.1, 1.6.1.7 and 2.4 contained in the Rules and Regulations for Water Service appearing as Petitioner's Exhibit WLGE-9. Those provisions are not approved and should be removed from the proposed Rules and Regulations for Water Service prior to their filing with the Commission's Water/Sewer Division. If Petitioner believes any of the disapproved provisions is necessary and should appear in its Rules and Regulations, Petitioner can seek Commission approval for the provisions in another proceeding or pursuant to the Commission's thirty-day procedures. At that time, concerns over the specific provision can be addressed.

12. **Capital Projects Deferral.** Petitioner is seeking the Commission's approval to defer depreciation and capitalize interest and equity costs on two capital improvement projects for the period subsequent to their respective in-service dates and for up to 24 months or the date of a final order in Petitioner's next general rate case, whichever occurs first. According to Mr. Etzler, under the proposal the amount of the depreciation deferral would be calculated using Utility Center's Commission-approved depreciation rate, which is currently 2%, and recorded as a

regulatory asset. Beginning at the time Utility Center's rates and charges reflect as part of Utility Center's rate base any utility properties associated with the projects, the deferred amount would be amortized over 50 years. Mr. Etzler also explained that capitalized interest and equity costs on the projects would be calculated utilizing the pretax rate of return approved by the Commission and included in the value of Petitioner's utility plant in service.

In support of the proposed deferral, Mr. Kopas testified that the requested deferral and capitalization is an accepted practice utilized by regulators to enable companies to avoid erosion of their financial position as a result of completing necessary major projects that are not timed with a rate proceeding. In this regard, Mr. Kopas pointed out that the Commission authorized Utility Center to defer depreciation and interest only on certain significant capital improvements in Cause No. 41968 for that purpose. Mr. Kopas also made clear that the deferral and capitalization of costs proposed by Petitioner in this Cause is only applicable to two identified projects, reasonably limited to 24 months and will be calculated using Commission-approved determinants, *i.e.*, Utility Center's 2% depreciation rate and approved rate of return. Further, Mr. Kopas testified that, while the projects will be included in the Company's next general rate filing, the proposed deferral will keep the Company from having to seek a rate increase due solely to those projects during the 24 months the deferral in place.

Mr. Corey testified on behalf of the OUCC that Petitioner had not quantified the earnings erosion that it will suffer if the proposed treatment is not approved. However, Mr. Corey admitted that the Commission has granted Petitioner similar relief in the past in order to avoid earnings erosion. Mr. Corey also expressed the view that, to the extent the Commission allowed Petitioner to defer and capitalize costs; it should be limited to deferring depreciation and only

capitalizing interest cost. The Commission should not permit the capitalization of any equity costs, in Mr. Corey's opinion.

On rebuttal, Mr. Kopas testified that identifying to what extent earnings will erode is difficult because the timing of the two projects is unclear. Mr. Kopas testified, however, that when a company invests money in an asset, and that asset is placed in service, the associated carrying costs and depreciation will increase the expense on the company's books and decrease earnings. This added expense erodes the company's earnings until new revenues are received for that asset in the next company rate case. An exception to this would be DSIC-eligible projects which enable companies to recover interest and equity-related carrying costs and depreciation expense prior to the next rate proceeding.

The specific projects that Petitioner is requesting the Commission to recognize as eligible for this treatment were described in Mr. Etzler's direct testimony. According to Mr. Etzler, Utility Center projects the need to install a one million gallon water storage tank in western Aboite Township. Mr. Etzler testified that Utility Center will need additional water storage capacity to maintain adequate flows for fire protection and supply water for the growth it projects. Final costs for this tank project are estimated at \$1,963,000.

In regard to its sewage disposal utility, Mr. Etzler testified that Utility Center is planning to divert wastewater flows that would be treated at its Main Aboite WWTP to its Midwest WWTP in order to balance flow between the two plants and provide capacity at its Main Aboite WWTP. This diversion will be accomplished by constructing a new pump station and new force main to the Midwest WWTP, with an interconnection to an existing pump station. The existing pump station also will be upgraded and interconnected to the new force main. Final costs for this diversion project are estimated at \$5,380,000.

The OUCC presented no testimony disputing the appropriateness of Petitioner's proposed diversion project for which it is seeking deferral and capitalization treatment. The testimony of the OUCC's witness Harold Rees actually confirmed that the planned diversion project will meet the need for more capacity at Petitioner's Main Aboite WWTP. In regard to the planned water storage tank, however, the OUCC's witness Roger Pettijohn testified that he did not believe that the planned tank was needed at this time. On rebuttal, Mr. Etzler did not dispute Mr. Pettijohn's testimony, but did point out that Utility Center is not seeking to have the Commission address the need for a tank or approve its construction. Further, Mr. Etzler stated that the planned tank will not be constructed until there is a need for it that establishes that it is not excess capacity. According to Mr. Etzler, if the tank is not constructed due to the lack of any need for it, no deferral or capitalization will occur. If the tank is built, Mr. Etzler stated, the requested deferral and capitalization treatment will permit Petitioner to reflect in future rates, subject to Commission approval, the post in-service depreciation and interest and equity costs associated with the tank.

Intervenor Fort Wayne's witness Mr. Nitza suggested that, as an alternative to the planned storage tank, Petitioner could make wholesale water purchases from the Fort Wayne. On rebuttal, Mr. Etzler disputed Mr. Nitza's claims. Mr. Etzler noted that Fort Wayne has raised this issue before the Commission and on each occasion the Commission had declined to give it credit. According to Mr. Etzler, Utility Center already possesses sufficient production capacity to supply its customers and does not require additional water resources and, based on prior experience with purchases of water from the Fort Wayne, can produce its supplies of water at a lower cost. Mr. Etzler also testified that water storage facilities are designed to provide uniform pressure, a "one day" supply of water based on system demand and excess water in case

of a major fire. Purchasing water from Fort Wayne, as testified to by Mr. Etzler, would not address these needs. Mr. Etzler also disputed whether purchases from the Fort Wayne would improve water quality. As stated by Mr. Etzler, any water quality problems that Utility Center may have relate to its distribution system, not its production facilities, and the condition of those distribution facilities will affect water obtained from Fort Wayne as it affects the water produced by Utility Center. Finally, Mr. Etzler testified that he believed the requirements of the Great Lakes Compact would make the type of water sales suggested by Mr. Nitza unlawful.

In regard to the planned sewer diversion project, Mr. Etzler testified that Fort Wayne's own system does not represent an alternative to the Aboite diversion. According to Mr. Etzler, the cost to construct the infrastructure needed to connect to Fort Wayne's facilities would increase the rates to Petitioner's customers and, more importantly, would do so unnecessarily. Mr. Etzler pointed out that Utility Center's plants have more than sufficient capacity to treat wastewater flows. Mr. Etzler also pointed out that during wet weather events, Fort Wayne cannot treat all of its own sewage and must discharge untreated wastewater through combined sewer overflows. In Mr. Etzler's opinion, this was not a situation that should be aggravated by adding wastewater flow from Utility Center, especially when Utility Center's own Midwest plant has the capacity to treat that flow in full compliance with its NPDES permit.

Indiana Code § 8-1-2-12 and § 8-1-2-14 give the Commission authority over the accounting procedures utilized by public utilities in Indiana. In a number of cases involving the bringing on line of major plant additions the Commission has authorized accounting procedure modifications in order to defer depreciation expense and capitalize carrying costs. Petitioner has presented evidence showing that the cost of the projects that would qualify for the treatment are significant. Further, although not quantified, the evidence shows that earnings erosion would

result from the denial of the requested relief also is significant. Consequently, we find Petitioner's proposal to be reasonable, in the public interest and should be approved.

13. **Additional Matters Raised by the OUCC.** The OUCC's witness Roger Pettijohn made several recommendations in his testimony that have not yet been addressed in this Order. Specifically Mr. Pettijohn recommended that, in light of the numerous water quality complaints expressed by customers, Petitioner should continue to file as required in Cause No. 43331 quarterly reports on the complaints it receives from its customers; that Petitioner should be prepared to inform its customers about sodium levels in its finished water; and that it include a report on the increase in its water loss as part of its next annual report to the Commission.

Petitioner expressed a willingness to comply with all of Mr. Pettijohn's recommendations. Further, we agree implementing them is appropriate. Accordingly, Petitioner shall again file the quarterly complaint reports it has in the past pursuant to the direction of Cause No. 43331 for an 18-month period comparable to that required in that proceeding. Petitioner shall develop and make available to its customers upon request data on the sodium content of its finished water. Petitioner shall also explore making that information available to its customers on its website and, if determined to be feasible, do so. Finally, Petitioner shall file with its next annual report to the Commission include a report on the magnitude and causes of the water losses described in Mr. Pettijohn's testimony.

14. **Additional Matters Raised by Intervenor.** Mr. Nitza on behalf of Intervenor Fort Wayne calls for the Commission to require Utility Center to take a more "regional" approach to planning that would involve consideration of "partnering" with Fort Wayne to develop alternatives to pursuing infrastructure improvements on its own. In this regard, Mr. Nitza asserts that Utility Center should be compelled to update its current Master Plans through a technical

conference process involving Fort Wayne.

Initially, Mr. Nitza failed to note that, as Mr. Etzler's direct testimony revealed, that Utility Center has already identified the need to update its current Master Plans and will be doing so within the next year. Moreover, Mr. Etzler testified on rebuttal that master plans, contrary to Mr. Nitza's suggestion, should not be used to identify potential regional partnerships or other alternatives that might meet the needs of a utility. Mr. Etzler pointed out that developing alternatives for meeting an identified need is part of engineering and cost analyses conducted subsequent to the development of master plans. According to Mr. Etzler, Utility Center prefers to continue to do its master planning in the industry-accepted manner, which limits the master planning process to identifying future capital needs and the time frame within which they need to be addressed.

The Commission is not aware of any authority requiring it to establish the scope of and otherwise supervise the master planning processes or waster and sewage disposal utilities, such as Utility Center. Further, Fort Wayne presented no evidence indicating that technical conferences or other actions of this Commission are needed to have Utility Center properly conduct its planned master planning, or that the expenditure of financial and other resources that such conferences will entail of the parties involved would be reasonable. Further, we agree with the purpose of master planning as described by Mr. Etzler and find the sort of regional planning argued for by Mr. Nitza is not necessary as part of an effective master planning process.

Notwithstanding the foregoing discussion, however, the Commission expects Utility Center to explore as part of any project engineering and cost analyses all possible alternatives to pursuing costly improvement projects on its own that its Master Plans may identify, including regional partnerships with Fort Wayne. Whether Utility Center meets this expectation can be

assessed in any proceeding in which Utility Center may seek to have projects approved by the Commission, or ultimately in any future rate case in which Utility Center seeks to pass costs associated with capital improvements on to its customers. In this regard, the OUCC is a necessary party to such proceedings and Fort Wayne may seek, as it has here, to intervene to present its views.

Similarly, Fort Wayne has not identified any immediate need for the Commission to require technical conferences intended to have Utility Center institute system development charges (“SDCs”) to fund growth related capital projects. As Mr. Etzler pointed out, SDCs would have had no effect on the rate increase request at issue in this Cause. As found above, the major projects reflected in the rates proposed in this Cause were pursued by Utility Center to improve and maintain the system for current customers, not to address future growth. In fact, the improvements to the Aboite Meadows WTP, which Utility Center and the OUCC agree should be included in rate base, were required by the Commission. Moreover, the reasonableness of permitting Utility Center to defer depreciation expense and capitalize certain carrying costs for two projects would not be affected by having SDCs available to partially fund them. Finally, as Mr. Etzler testified, Utility Center intends to continue to review the need for SDCs and, if it determines to pursue Commission approval for such charges, Fort Wayne would have the opportunity as an Intervenor to express its thoughts and opinions related to them. Accordingly, like the request concerning Utility Center’s planned master planning, the Commission denies Fort Wayne’s request that it require Utility Center to establish SDCs through a technical conference process.

IT IS, THEREFORE, ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Consistent with Finding No. 9 of this Order, Petitioner is hereby authorized to increase its recurring monthly rates and charges in order to have the opportunity earn additional operating revenues for its water and sewage disposal utilities of \$993,685 and \$1,286,945, respectively.

2. Petitioner shall file with the Water/Wastewater Division of the Commission new schedules of rates and charges consistent with Finding No. 10, which schedules of rates and charges shall be effective on and after the date of approval.

3. Petitioner shall file with the Water/Wastewater Division of the Commission new Rules and Regulations consistent with Finding No. 11 of this Order, which Rules and Regulations shall be effective on and after the date of approval.

4. Petitioner may defer depreciation and capitalize interest and equity costs in the manner and to the extent described in Finding No. 12 of this Order.

5. Petitioner shall comply fully with the directions of Finding No. 13 of this Order.

6. This Order shall be effective on and after the date of its approval.

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: _____

I hereby certify that the above is a true and correct copy
of the Order as approved.

Brenda A. Howe
Secretary to the Commission